

Internal Revenue Service
District Director

*No protest per [redacted] case closed by
informal steps - [redacted]*

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Date: MAY 20 1997

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(9) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

~~_____~~
~~_____~~

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

C. Ashley Bullard
C. Ashley Bullard
District Director

Enclosures: 3

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]
[REDACTED]
You were incorporated on [REDACTED]
[REDACTED]. Your stated purposes in pertinent part are:

The organization is a voluntary organization of full-time employed police officers of [REDACTED], organized as an exempt organization under I.R.C. 501(c)(9). It provides for the payment of sick, accident, and other benefits to its members and their dependents, and substantially all operations are in furtherance of providing these benefits.

Membership in your organization is open to all regularly appointed police officers of [REDACTED] who are employed full-time and pay the required dues.

The activities of consist of the provision of the following benefits to members:

- a. A death benefit of \$[REDACTED] to be paid upon the death of any member, with double indemnity if the member dies in the line of duty. Additionally, a death benefit of \$[REDACTED] is paid to a member upon the death of his or her spouse.
 - b. \$[REDACTED] spray of flowers at the funeral of any [REDACTED] member, member's spouse, or other dependent of the member. If a member is killed in the line of duty, then upon the subsequent death of the member's spouse or dependent, the [REDACTED] provides a \$[REDACTED] spray of flowers at the funeral of the spouse of dependent.
 - c. Immediate financial support in an amount not to exceed \$500.00 to any member who is experiencing financial crises due to illness or personal injury suffered by a member, a member's spouse, or a member's dependent.
 - d. Payment for the cost of food at the [REDACTED], plus an additional \$[REDACTED] to help defray expense of the Annual Dinner.
 - e. Sponsorship of other benefits by the [REDACTED] in the form of an Annual Christmas Party of the benefit of members and their immediate families, which is intended as a recreational opportunity for the members' and their families' to off-set the stresses associated with members' line of work. A maximum of \$[REDACTED] per year is set aside for this function.
 - f. After a member retires with [REDACTED] years of service, the [REDACTED] provides the retiring officer with a copy of his or her shield, plus a one-time severance benefit of \$[REDACTED], which is intended to provide financial assistance between the member's final paycheck and receipt of first social security check.
- [REDACTED]

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]

Your income consists solely of monthly membership dues.

The expenses of your organization are those relating to your activities.

Section 501(c)(9) of the Code provides exemption to voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(f) of the Regulations provides in pertinent part:

The term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement, or a benefit that is similar to the benefit provided under a stock bonus plan or profit-sharing plan.

The regulations provide that "other benefits" are those which are similar to life, sick and accident benefits. A benefit is similar if:

(a) It is intended to safeguard or improve the health of a member or a member's dependents, or

(b) It protects against a contingency that interrupts or impairs a member's earning power.

(c) The following are examples of permissible other benefits:

- 1 Paying vacation benefits.
- 2 Providing vacation facilities.
- 3 Subsidizing recreational activities.
- 4 Providing child-care facilities.

Permissible severance benefits are defined by reference to 29 CFR 2510.3-2(b). This labor law provision distinguishes a severance pay plan from a pension plan for purposes of Title I of ERISA. This provision provides in pertinent part:

(1) for purposes of Title I of the Act and this chapter, an arrangement shall not be deemed to constitute an employee pension benefit plan or pension plan solely by reason of the payment of severance benefits on account of the termination of an employee's service, provided that:

(i) Such payment are not contingent, directly or indirectly, upon the employee's retiring

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]

The regulations provide that substantially all of an IRC 501(c)(9) organization's operation must be in furtherance of providing permissible benefits. This means that while an organization may provide some nonqualifying benefits, it will not qualify for exemption if it systematically and knowingly provides nonqualifying benefits of more than a de minimis amount.

Rev. Rul. 87-126, 1987 - 2, C. B. 150, held that a nonprofit firefighters' association that provides firefighters with retirement benefits, which are funded by government sources and which are the exclusive retirement benefits provided to these firefighters, qualifies for exemption under section 501(c)(4) of the Code.

Rev. Rul. 81-58, 1981-1, C.B. 331, held that a nonprofit police officers association whose primary activity is providing lump-sum retirement payments to its members or death benefits to their beneficiaries will not qualify as a social welfare organization for taxable years beginning after August 23, 1981.

Rev. Rul. 63-190, 1963-2, C.B. 212, held that a nonprofit organization (not operated under the lodge system) that maintains a social club for members and also provides sick and death benefits for members and their beneficiaries does not qualify for exemption under IRC 501(c)(7), IRC 501(c)(4) or IRC 501(c)(8).

Canton Police Benevolent Association of Canton, Ohio v. U.S., 658 F. Supp. 411 (D.C., N.D. Ohio, East Div., 1987) upheld the revocation of an organization providing a retirement dividend to its members upon separation from employment with the Canton Police Department after 20 years of service.

Police Benevolent Association of Richmond v. U.S., 661 F. Supp. 765 (E.D. Va. 1987) held that a police benevolent association that provided retirement benefits to its members did not qualify as a tax-exempt organization operated for either charitable purposes under IRC 501(c)(3) or for the promotion of social welfare under IRC 501(c)(4). Only officers who voluntarily joined and paid annual dues were eligible for benefits. The Court concluded that the organization served the private interests of its active members.

The provision of death benefits, financial support to members who suffer financial crises due to illness or personal injury and subsidizing recreational activities, such as your [REDACTED] and Christmas party are permissible benefits as defined in the regulations.

However, the provision of a benefit upon retirement of service is not a permissible benefit as defined in Regs. 1.501(c)(9)-3(f). In addition, the benefit would not be classified as a severance benefit since it is not a permissible severance benefit defined by reference to 29 CFR 2510.3-2(b). The benefit you provide is contingent upon the employee's retiring.

[REDACTED]

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]
[REDACTED]

You are not as described in Rev. Rul. 87-126, 1987-2, C.B. 150, since you are not funded by government sources and there is no indication the benefits you offer are the exclusive benefits offered to the police officers.

You are similar to the organization described in Rev. Rul. 81-58, 1981-1, C.B. 331, since your activities include the provision of a payment upon retirement to members.

You are similar to Rev. Rul. 63-190, 1963-2, C.B. 212, since you provide sick and death benefits to members and their beneficiaries.

Your operations are similar to Canton Police Benevolent Association of Canton, Ohio and Police Benevolent Association of Richmond since your activities include the provision of retirement benefits to members.

Your letter dated February 10, 1997 cited Regs. 1.501(c)(9)-3(d)(2) as precedent concerning the benefit paid to retirees. Regs. 1.501(c)(9)-3(d)(2) provides a benefit is similar to a life, sick or accident benefit if (2) it protects against a contingency that interrupts or impairs a member's earning power. We disagree with your position. The payment does not protect against a member's earning power since the payment is made at retirement. In addition, section 1.501(c)(9)-3(f) of the Regulations specifically states that other benefits does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement.

On February 24, 1997 we suggested removing the retirement benefit from your activities. To date, you have not removed this benefit.

The \$[REDACTED] retirement benefit offered by the organization is not de minimis in comparison to the other benefits offered by the organization. Accordingly, it appears you systematically and knowingly provide nonqualifying benefits of more than a de minimis amount. Therefore, we conclude you do not qualify for exemption.

Form **6018**
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare In
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

MAY 20 1987

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7425.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date